

Remarks

By this filing, claims 65, 68, and 71 are amended. No claims are deleted. Claim 72 is added. So claims 65, 68, and 71-72 are pending in the application.

Claim 65 is amended to say that each of the independent poles is an “elongated body that extends between and terminates at two terminal ends,” one of which ends is an “upper terminal end” that is “positioned above the rebounding mat.” These changes clarify that the claimed poles are not inverted U-shaped poles, because both terminal ends of inverted U-shaped poles would be located below the rebounding mat.

Claims 65 and 71 are amended to say that each pole is “spaced apart from all the other poles such that none of the poles is located immediately alongside another of the poles . . .” This is to clarify that none of the poles is in close proximity to any of the other poles.

Claim 71 is also amended, consistent with claim 65, to say that “the uppermost elevation of each pole [is] five to eight feet above the rebounding mat . . .”

Claim 72 is added and calls for “an end cap at the top of the upper terminal end of each pole.”

Basis for the amendments can be found thought the specification, and particularly in the drawings which show poles the have terminal ends located above the rebounding mat and that are topped with end caps and that show poles that are spaced apart from all the other poles such that none of the poles is located immediately alongside another of the poles.

Interview Summary

Applicants thank Examiner Donnelly for participating in a telephone interview conducted on September 21, 2011, and for sharing his insights on the wording of the claims.

Attending the interview on behalf of the Applicants were Mark Publicover, Daniel Publicover, and the undersigned.

Claims 65 and 71 and the significance of U.S. Patent No. 5,399,132 (Bailey) with regard to those claims were discussed. Applicants urged that the pending claims were not shown or suggested by the teachings of the Bailey patent and that nothing in the prior art shows or suggests a system wherein the uppermost elevation of each pole is five to eight feet above a rebounding mat.

It was discussed that the claims could be amended to more precisely describe the spacing of the poles as mentioned in the independent claims and the location of the upper ends of the poles as mentioned in claim 65.

Information Disclosure Statements

Information disclosure statements were filed for this application on March 5, 2001, July 2, 2004, and January 31, 2005.

Applicants can find no indication that those Information disclosure statements have been considered.

It is respectfully requested that the submitted information be considered and that such consideration be acknowledged.

Additional copies of the Forms 1449 are being submitted herewith for the convenience of the Examiner.

Rejections

All the pending claims of this application stand rejected, based primarily on the teachings of U.S. Patent No. 5,399,132 (Bailey).

The pending claims concern trampolines having safety enclosures supported by poles that extend no more than eight feet above the rebounding mat of the trampoline.

With regard to this limitation, the Office action states:

Bailey discloses a device comprising poles between the range of approximately 5-8 ft as disclosed by the drawings of Bailey. As to manufacturing the device of Bailey including poles of a height between 5- 8 ft the examiner notes that this height would have been obvious so as to maintain a user of the device within the confines of the device when bouncing and exercising.

Applicants respectfully assert that the Examiner's stated conclusions are not correct.

There is nothing in the Bailey patent that describes poles that would be as short as eight feet tall. Nor was that feature inherently obvious.

Bailey never used poles as short as eight feet and did not write his patent application to describe the use of such short poles.

On April 4, 2011, Applicants filed a declaration of Arthur Bailey, the inventor and owner of U.S. Patent No. 5,399,132. A copy of that declaration is submitted herewith.

In his declaration Mr. Bailey states:

The Bailey patent teaches a minimum panel or pole assembly height of at least 8.5 feet. Any prototype and products I produced were made with the panel or pole assemblies at or above 8.5 feet. The first enclosure I ever saw with poles shorter than 8.5 feet in height was the Publicover enclosure, at 6 feet above the jump surface. I strongly believed, at that time, the Publicover poles were too short and risked having a jumper land down on them from above and injure themselves or could allow a jumper to accidentally bounce over the poles onto the ground.

The foregoing testimony demonstrates that the cited Bailey patent does not teach or suggest the invention presently claimed.

The use of shorter poles might be a simple concept in hindsight. But as evidenced by the above-quoted statement of Mr. Bailey, at the time Applicants' presently claimed invention was conceived, no one working in the trampoline industry foresaw that the presently claimed invention would be safe or workable.

(The prior art of trampoline enclosure systems was searched extensively during litigation, particularly in *JumpSport, Inc. v. JumpKing, Inc.*, ND Cal, C 01-4986 PJH, which concerned U.S. Patent No. 6,053,845 and U.S. Patent No. 6,261,207. Those patents are the grandparent and parent of the present application. None of the prior art located as a result of that searching showed or suggested poles that extended less than 8.5 feet above a trampoline mat.)

The present application claims the benefit of the filing dates of various prior U.S. patent applications filed in the late 1990's, the earliest of which is U.S. Provisional Application No. 60/050,323, filed June 20, 1997. Prior to the Applicants' discoveries back at the time, trampolines were widely considered to be dangerous, with thousands of injury accidents reported each year.

As a possible solution to this problem, it had been proposed to build fences around trampolines to protect users from falling off. Because a trampoline has the ability to launch a jumper a considerable distance into the air, it was thought that such a protective fence would need to be tall, extending 8.5 feet or more above the surface of the trampoline mat. No known prior art trampoline fence had poles that extended less than 8.5 feet above the surface of a trampoline mat.

Such tall fences would be effective in reducing injuries. But as a practical matter, most trampoline injuries result from the use of home trampolines. With few exceptions, users of home

trampolines did not purchase the expensive and unsightly tall fences that had been proposed prior to the present invention.

Before the introduction of the presently claimed invention, sales of trampoline safety enclosures were miniscule despite the long-recognized need to reduce injuries associated with trampoline use. The first truly successful trampoline enclosure systems were systems of the type defined by claims 65, 68, and 72. Such systems first were distributed by JumpSport, Inc., which owns the present patent application and its progenitors. After JumpSport introduced enclosure systems of the type specified by claims 65, 68, and 72, that employ short, cost-effective poles, millions of such enclosure systems (including systems made by infringers of the patents issued from the parent and grandparent applications) have been sold and have significantly reduced the occurrence of trampoline-related injuries.

Bailey worked diligently to commercialize and profit from the enclosure shown in his patent and he did sell some units, but the Bailey system did not achieve commercial success and was not copied by others. In contrast, the presently claimed enclosures, having spaced-apart, shorter poles, quickly achieved commercial success and spawned several copyists who also distributed such enclosures. The unobviousness of JumpSport's enclosure systems, having relatively short, cost-effective, spaced apart poles of the type specified in claims 65, 68, and 72, is demonstrated by the fact that neither Bailey nor anyone else marketed such enclosure systems before their introduction by JumpSport, Inc., and by the subsequent overwhelming success of such enclosure systems.

Even the present Applicants at first did not think the presently claimed invention would work. In his testimony in *JumpSport, Inc. v. JumpKing, Inc.*, ND Cal, C 01-4986 PJH, inventor Mark Publicover testified that the Applicants' first enclosure designs and prototypes, like the

prior art, used poles that angled or inclined away from the trampoline, that were very tall, or that were cage-like structures.

Like other before them, Applicants had safety concerns. A falling body carries a great deal of energy. Absorbing that energy on the top of a pole was seen as likely to cause injuries. That was the reason why everyone, including Applicants at first, used poles extending to an elevation above the perceived potential impact zone (at least 8.5 feet above the mat).

Applicants subsequently conducted experiments regarding conditions that cause trampoline jumpers to be injured. Surprisingly, live impact testing showed that jumpers were not injured with shorter poles that were independent, without a rigid member extending between the upper ends of every pair of adjacent poles such that not all of the upper ends of the poles are secured together by a rigid framework, and therefore were able to flex and bend out of the way when impacted on their tops.

As a result of their discovery, Applicants were able to use shorter poles (extending only five to eight feet above the rebounding mat), which allowed for a smaller, lower-cost, and more-appealing structures.

The pending claims further distinguish the Bailey patent because they call for spaced apart poles. The differences between the presently claimed pole spacing and the spacing used by Bailey best are seen by viewing the drawings of the present application and the drawings of the Bailey patent.

To clarify this distinction, claims 65 and 71 are amended to say that each pole is “spaced apart from all the other poles such that none of the poles is located immediately alongside another of the poles.”

Applicants respectfully assert that this amendment addresses the Examiner's concern that the claims, as previously written, did not exclude the situation where "every other pole [is] spaced apart from another pole, not immediately adjacently spaced poles."

Applicants' wider pole spacing is significant for additional reasons.

Because Bailey used a lattice of interwoven ropes on U-shaped pole-structured members (e.g. made of tubing material) to form his barrier, it was necessary for Bailey to adjacently position his pole assemblies in order to completely surround a trampoline with a fall prevention barrier.

All things being equal, Bailey's adjacent pole assemblies require about twice the length of tubing (twice the weight of tubing) as presently claimed enclosure systems. A Bailey enclosure, with its adjacent pole assemblies, weighs at least twice as much. This difference in size and weight causes the Bailey system to have several disadvantages when compared to comparable enclosure systems of the presently pending claims.

In his preferred enclosure (FIGS. 1-6), Bailey's adjacent pole assemblies are secured together with ropes. For that reason, Bailey's preferred enclosure has about twice the inertia or resistance to movement as comparable enclosure system of the presently claimed systems that employ independent poles. This means that the body of a jumper impacting a preferred Bailey enclosure will need to absorb substantially more of the collision energy during the first moment of impact thus increasing the injury potential as compared to a spaced apart pole configuration which has no more than about half the inertia of the Bailey enclosure. In a second configuration (FIG. 7) that is "not preferred" (col. 4, line 44), Bailey's adjacent poles do not appear to be lashed together by ropes. In this second configuration, wherein it is critical for Bailey's pole assemblies to be immediately adjacent to avoid gaps that would allow a jumper to fall off,

Bailey's poles would have twice the mass and volume of tubing material as a comparable spaced-apart pole enclosure system of the presently pending claims.

All the additional tubing material makes the Bailey enclosure more difficult to put up and take down.

As discussed beginning at page 29, line 19 of the specification of the present application, the presently claimed enclosure systems typically can be provided in compact, lightweight packages as compared to the Bailey enclosure which, because it requires so much tubing material, is less portable and thus more cumbersome and costly for retailers and consumers to move and store.

And because twice the amount of tubing material is required, a Bailey enclosure typically would be much more expensive than a comparable enclosure system according to the presently pending claims.

The system of new claim 72 further is patentable in that it calls for an end cap at the top of the upper terminal end of each pole. The trampoline jumping system of claim 72 is not shown or suggested by any known prior art. Such end caps are featured in trampoline jumping system claims of the progenitor patents, including claims 7 and 15 of U.S. Patent No. 6,053,845 and claims 9 and 10 of U.S. Patent No. 6,261,207. Those claims were challenged in *JumpSport, Inc. v. JumpKing, Inc.*, ND Cal, C 01-4986 PJH. On appeal, the Court of Appeals for the Federal Circuit held that those claims were not invalid (not anticipated or obvious from the prior art).

The presently claimed trampoline jumping systems are neither shown nor suggested by the prior art, including Bailey. The rejections therefore should be withdrawn.

Conclusion

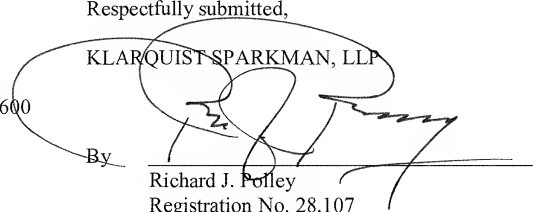
For the reasons stated above, Applicants respectfully request that the application be approved and that a Notice of Allowance be issued.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301

By


Richard J. Polley
Registration No. 28,107